

Office of the Attorney General
State of Tennessee

***1 Opinion No. 93-72**
December 28, 1993

Creation of Municipal Emergency Communications District

Rep. Clint Callicott
Room 214, War Memorial Building
Nashville, TN 37243-0161

QUESTION

1. Is a municipality authorized under T.C.A. §§ 7-86-101, et seq. to create a municipal emergency communications district without the approval of a county-wide emergency communications district in which the municipality is located.
2. If the answer to question 1 is yes, should the authorizing referendum be held within the municipality or must it be held throughout the county-wide district?
3. If the answer to question 1 is yes, will the new district be entitled to user fees generated within its boundaries to the exclusion of the existing county-wide district, and does the existing county-wide district retain any obligations within the boundaries of the new municipal district?

OPINION

1. It is the opinion of this Office that T.C.A. §§ 7-86-101, et seq. authorize a municipality to create a municipal emergency communications district without the approval of a county-wide emergency communications district in which the municipality is located.
2. It is the opinion of this Office that the authorizing referendum should be held within the municipality.
3. It is the opinion of this Office that a municipal emergency communications district, once created, will be excluded from the service area of the county-wide district. Thus, the municipal district will be entitled to user fees generated within its boundaries to the exclusion of the existing county-wide district, and the county-wide district will retain no obligations within the boundaries of the new municipal district, beyond the obligation of both districts to coordinate their efforts to ensure prompt, efficient service to all the residents in the area.

ANALYSIS

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1. Creation of New District

This opinion involves an interpretation of the Emergency Communications District Law, T.C.A. §§ 7-86-101, et seq. (the "Act"). The primary purpose of statutory construction is to ascertain and give effect, if possible, to the intention or purpose of the legislature as expressed in the statute. *Westinghouse Electric Corporation v. King*, 678 S.W.2d 19 (Tenn.1984), appeal dismissed, 470 U.S. 1075 (1985). Subsection (a) of T.C.A. § 7-86-102 provides:

The general assembly finds and declares that the establishment of a uniform emergency number to shorten the time required for a citizen to request and receive emergency aid is a matter of public concern and interest. The general assembly finds and declares that the establishment of the number 911 as the primary emergency telephone number will provide a single, primary, three- digit emergency telephone number through which emergency service can be quickly and efficiently obtained and will make a significant contribution to law enforcement and other public service efforts requiring quick notification of public service personnel. It is the intent to provide a simplified means of securing emergency services which will result in saving of life, a reduction in the destruction of property, quicker apprehension of criminals and ultimately the saving of money.

*2 T.C.A. § 7-86-102(a) (Supp.1993). Under the Act, the legislative body of any municipality or county may by ordinance or resolution create an emergency communications district within all or part of the boundaries of such municipality or county. T.C.A. § 7-86-104(a) (1992). Before such a district may be established, the legislative body of the municipality or county must request the county election commission to submit to the voters within the boundaries of a proposed emergency communications district the question of creating such a district in an election. T.C.A. § 7-86-104(b) (1992). Upon approval by a majority of the eligible voters within the area of the proposed district voting at such referendum, the legislative body may create an emergency communications district. T.C.A. § 7-86-105(a) (Supp.1993). The board of directors of such district is authorized to levy an emergency telephone service fee to users within the district.

In your request, you ask whether a city which is already within the boundaries of a county-wide emergency communications district may create its own emergency communications district separate from the county district. We note that we have previously concluded that the area encompassed by an emergency communications district is an exclusive service area. *Op.Tenn.Atty.Gen. U90-104* (June 26, 1990). That opinion request involved a county which wished to create a district encompassing the entire county. A municipality located within county boundaries had already created a municipal communications district. That opinion, in effect, concluded that the proposed county district could not include territory within the municipal district. However, we noted that two districts may enter into a mutual agreement regarding these services pursuant to the Interlocal Cooperation Act, T.C.A. §§ 12-9-101, et seq.

In the above-referenced opinion, this Office noted that the Act does not address any process for merger or consolidation of districts. With regard to the issue addressed here, the Act contains no procedure for splitting or carving off a newly created municipal communications district from an already existing county communications district. An existing county-wide district would include the municipal territory. Presumably its budget and service contracts would include

user fees from municipal residents and service extended to municipal territory. Allowing a municipality to create its own district may therefore cause some disruption in the county district's services. It could be argued that the citizens of the municipality which wishes to create the new district have already had the opportunity of participating in the county-wide election which authorized the creation of the county-wide emergency communications district, and that the city should therefore be precluded from establishing a municipal district.

Based on our review of the Act, however, it appears that a county-wide district can be established without the approval or participation of a municipal legislative body. Further, we would note that both county and municipal legislative bodies are expressly accorded the authority to create an emergency communications district. In construing a statute, it is the duty of the court to give every word and phrase meaning. *Loftin v. Langsdon*, 813 S.W.2d 475 (Tenn.App.1991), appeal denied. Nothing in the Act suggests that a city or town within a county-wide district is precluded from exercising its power and discretion to create its own district after a county-wide district has been formed. We therefore conclude that a municipal legislative body may create a municipal emergency communications district even when the municipality is already located within a county-wide district.

*3 This conclusion is consistent with the plain language of T.C.A. § 7- 86-104(a), which allows the legislative body of "any" municipality or county to create an emergency communications district after approval by referendum. Moreover, this conclusion is also consistent with the power granted in many private act municipal charters and by state law, according municipalities the right to grant exclusive franchises to provide utilities within their borders. See, e.g., T.C.A. § 6-2-201(13) (1992). Nothing in the Act suggests that a municipality grants a county-wide district an exclusive franchise by failing to exercise its right to create its own district before the county-wide district is created. We would also note that under state annexation law a municipality acquires the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes. T.C.A. § 6-51- 111(a) (Supp.1993).

2. Location of Referendum

T.C.A. § 7-86-104(b) provides in relevant part:

The legislative body of any municipality or county shall by resolution request the county election commission to submit to the voters within the boundaries of a proposed emergency communications district the question of creating such district in an election to be held pursuant to § 2-3-204.

T.C.A. § 7-86-104(b) (1992) (emphasis added). As a result, it would appear that the referendum on the creation of a municipal emergency communications district should be submitted to the voters within the municipality.

3. Right to User Fees and Service Obligations

As noted above, this Office has concluded that each emergency communications

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district is an exclusive service area. It would therefore appear that the territory within the newly created municipal emergency communications district would be excluded from the exclusive service area of the county district. Pursuant to T.C.A. § 7-86-108, the board of directors of an emergency communications district is authorized to levy an emergency telephone service charge to users. The statute states: "Any such service charge shall have uniform application and shall be imposed throughout the entire district to the greatest extent possible in conformity with the availability of such service within the district." T.C.A. § 7-86-108(a)(1) (Supp.1993) (emphasis added). It therefore appears that, upon its creation, the municipal district would have the sole right to levy user fees within its boundary. Further, it would appear that, upon its creation, the municipal district would be the sole provider of emergency communication services within the municipal boundaries. Thus, the county district would retain no obligation to provide services within the municipality's boundaries, beyond the continuing obligation of both districts to coordinate their efforts to ensure prompt, efficient service to area residents. Again, the municipal and the county districts could still contract together for the provision of services under the Interlocal Cooperation Act, T.C.A. §§ 12-9-101, et seq.

*4 Charles W. Burson

Attorney General and Reporter

Michael E. Moore

Solicitor General

Ann Vix

Assistant Attorney General

Tenn. Op. Atty. Gen. No. 93-72, 1993 WL 561231 (Tenn.A.G.)

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